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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 SATURNINO PRADO,) No. CV 11-3789-GHK(CW)
13)
14 Petitioner,) ORDER DISMISSING PETITION
15) AS SUCCESSIVE
16 v.)
17 UNITED STATES DISTRICT COURT,)
18)
19 Respondent.)
20 _____)
21)
22)
23)
24)
25)

18 Petitioner is a prisoner in state custody pursuant to a 2000
19 conviction in California Superior Court, Los Angeles County, Case No.
20 BA195408. The present pro se petition challenges the legality of that
21 conviction.¹ Petitioner has brought several prior federal habeas
22 petitions that challenged the same conviction. One of these
23 petitions, Prado v. Specter, No. CV 05-4053-GHK(CW), was dismissed
24 with prejudice, as untimely, in a judgment entered November 15, 2006.
25 _____

26 ¹ The present petition wrongly names this court as Respondent,
27 and wrongly cites one of Petitioner's prior cases in this court as the
28 case of conviction: No. CV 04-456-GHK(CW). The record in that case,
and Petitioner's other cases in this court, properly identify the
court and case of conviction.

1 Another petition was dismissed, without prejudice, as unexhausted.
2 See Prado v. McGrath, No. CV 04-456-GHK(CW)(dismissed). Seven other
3 petitions have been dismissed, without prejudice, as successive. See
4 Prado v. Spector, No. CV 07-2532-GHK(CW); Prado v. Knowles, No. CV 07-
5 3355-GHK(CW); Prado v. Warden, No. CV 08-6909-GHK(CW); Prado v.
6 Warden, No. CV 08-7458-GHK(CW); Prado v. Altoon, No. CV 10-2931-
7 JHN(CW); Prado v. Spector, No. CV 10-7492-JHN(CW); and Prado v. U.S.
8 District Court, No. CV 10-9065-GHK(CW)(successive).

9 DISCUSSION

10 A new habeas petition under 28 U.S.C. § 2254, which challenges
11 the same state court judgment addressed in one or more prior § 2254
12 petitions, is a second or successive petition. A federal district
13 court may not consider a second or successive petition unless the
14 petitioner has first obtained an order from the proper federal circuit
15 court of appeals authorizing the district court to review the new
16 petition. See 28 U.S.C. § 2244(b)(3)(A). The court of appeals may
17 only authorize review of a second or successive petition in the
18 district court if the petitioner "makes a prima facie showing [to the
19 court of appeals] that the application satisfies the requirements of"
20 28 U.S.C. § 2244(b). See 28 U.S.C. § 2244(b)(3)(C); Felker v. Turpin,
21 518 U.S. 651, 657, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996).

22 The present petition is a second or successive petition under
23 § 2244(b)(3)(A) because it challenges the same state court judgment
24 challenged in a prior federal petition, and that prior petition was
25 dismissed with prejudice. This court may not review a successive
26 petition unless the petitioner has first obtained the required order
27 from the United States Court of Appeals for the Ninth Circuit. There
28 is no indication in the record that this petitioner has obtained such

1 an order. Therefore, the present petition is subject to dismissal
2 without prejudice.²

3 Petitioner may file a new petition in this court if and only if
4 he first obtains authorization from the Ninth Circuit pursuant to 28
5 U.S.C. § 2244(b)(3)(A).³

6 **ORDERS:**

7 1. It is **ORDERED** that judgment be entered dismissing the
8 petition as successive.

9 2. The clerk shall serve copies of this order and the judgment
10 herein on the petitioner.

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12 DATED: 5/12/11

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15 _____
16 GEORGE H. KING
17 United States District Judge

18 Presented by:

19 Dated: May 10, 2011

20 
21 _____
22 CARLA M. WOEHRLER
23 United States Magistrate Judge

24
25 ² A new petition is not subject to dismissal as successive under
26 § 2244(b)(3)(A) based on a prior petition dismissed without prejudice
27 (e.g., for failure to exhaust state remedies). In re Turner, 101 F.3d
28 1323, 1323 (9th Cir. 1997). The present petition is dismissed as
successive to No. CV 05-4053 which was dismissed with prejudice.

³ If Petitioner continues to file successive petitions, this
court will continue to dismiss them summarily.